

MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

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Working to "conclude compacts for the equitable division and apportionment of waters between the State and its people and the several Indian Tribes claiming reserved water rights within the state," and "between the State and its people and the federal government claiming non-Indian reserved waters within the state" (85-2-701, 703)

- **Montana's Reserved Water Rights Compact Commission (RWRCC)** was established by the Montana Legislature in 1979 as part of the state-wide general stream adjudication process (85-2-701, MCA). The RWRCC is attached to the Department of Natural Resources & Conservation for administrative purposes. The Commission is scheduled to sunset on July 1, 2013.
- **The RWRCC is composed of nine members.** Four members are appointed by the Governor, one member is appointed by the Attorney General, two members are appointed by the President of the Senate and two members are appointed by the Speaker of the House of Representatives. A professional and technical staff of five supports the RWRCC including the staff director, one attorney, an agricultural engineer, one hydrologist, and a GIS specialist. The staff is scheduled to transfer to the DNRC to conduct compact implementation tasks upon sunset of the Commission.
- **The RWRCC is authorized to negotiate settlements** with federal agencies and Indian tribes that claim federal reserved water rights within the State. A federal reserved water right is a right to use water that is implied from an act of Congress, a treaty, or an executive order establishing a tribal or federal reservation. The amount of water to which a reservation is entitled depends on the purpose for which the land was reserved. In Montana, reserved water rights have been claimed for seven Indian reservations, for allotments for the Turtle Mountain Chippewa Tribe, for national parks, forests, and wildlife refuges, and for federally designated wild and scenic rivers.
- **The claims of the tribes and the federal agencies are suspended from adjudication** in the Montana Water Court while they are being negotiated by the RWRCC (85-2-217 MCA). Settlements negotiated by the RWRCC on behalf of the State are ratified by the Montana Legislature and the Tribes and approved by the appropriate federal authorities. In some instances, approval by the U.S. Departments of Justice and the Interior will be sufficient. In other cases, where federal authorization or federal appropriations are needed to implement provisions of the settlement, Congressional approval will be required.
- **Citizen participation** is an essential element of each negotiation and insures that the RWRCC's deliberations on behalf of the State address the concerns of the public and incorporate local solutions to water use problems. The negotiations are open to the public and additional public meetings are held during initial stages of negotiations and again when negotiations are nearing completion. Public comment may be submitted during the legislative phase and finally, objections may be made to the Montana Water Court prior to the incorporation of a compact into a basin decree.

COMPLETED COMPACTS

(Dates of passage and approval by Montana Legislature)

Fort Peck Tribe –Assiniboine and Sioux
May 1985, 85-20-201, MCA

Northern Cheyenne Tribe
September 1992, 85-20-301, MCA
Congress: P.L. 102-374 (1992)

U.S. Department of the Interior, National Park Service
Jan. 1994, 85-20-401, MCA
Yellowstone National Park
Glacier National Park
May 1995
Little Bighorn Battlefield National Monument
Big Hole National Battlefield
Bighorn Canyon National Recreation Area

U.S. Department of the Interior, Bureau of Land Management
September 1997, 85-20-501, MCA
Upper Missouri National Wild and Scenic River
Bear Trap Canyon Public Recreation Site

Rocky Boy's Reservation – Chippewa Cree Tribe
April 1997, 85-20-601, MCA
November 1999, Congress: P.L. 106-163

U.S. Department of the Interior, Fish and Wildlife Service
July 1997, 85-20-701, MCA
Black Coulee National Wildlife Refuge
Benton Lake National Wildlife Refuge
April 1999, 85-20-801, MCA
Red Rock Lakes National Wildlife Refuge
March 2007, 85-20-1301, MCA
Bowdoin National Wildlife Refuge
April 2009, 85-20-1601
National Bison Range

Crow Tribe
June 1999, 85-20-901, MCA Special Legislative Session

Fort Belknap - Gros Ventre and Assiniboine
April 2001, 85-20-1001, MCA

U.S. Department of Agriculture, Agriculture Research Service
March 2007, 85-20-1101, MCA
Fort Keogh Livestock and Range Research Laboratory
March 2007, 85-20-120, MCA
Sheep Experiment Station

U.S. Department of Agriculture, Forest Service
April 2007, 85-20-1401, MCA

Blackfeet Tribe
2009, 85-20-1501, MCA

COMMISSIONERS – 2010

(Four-year terms)

Chris Tweeten, Chairman
Attorney General's Office appointee

Richard Kim
Governor's appointee 2009

Gene Etchart
Governor's appointee 2007

Dorothy Bradley
Governor's appointee 2007

Mark DeBruycker
Governor's appointee 2007

Representative Dave McAlpin (1)
House Speaker appointee

Rep. Jeffrey Welborn
House Speaker Appointee

Senator John Brueggeman (2)
Senate President Appointee

Senator Carol Williams
Senate President Appointee

- (1) Representative McAlpin did not seek re-election. The House Speaker will appoint a new Commissioner.
- (2) Senator Brueggeman has resigned from the Senate. The Senate President will appoint a new Commissioner.

HB 49 Testimony

HB 49 - An Act to Authorize General Obligation Bonds for Water Related Infrastructure Projects on the Blackfeet Reservation

Overview

The State of Montana entered into a water rights compact with the Blackfeet Tribe with strong support of the 2007 & 2009 Legislatures. As part of Montana's contribution to the overall compact agreement, the State agreed to contribute \$20 million for the improvement of the Four Horns Reservoir system. \$4 million was allocated in 2009. This proposed legislation provides for authorization of \$16 million of general obligation bonds to complete the State's financial commitment to the compact settlement.

Detail

The 2007 Montana Legislature enacted HB 829, which established the Blackfeet Tribe infrastructure account (85-20-1505, MCA). (This bill was approved by the House 83-16 and the Senate with a unanimous vote.)

The 2009 Montana Legislature passed HB 161, which ratified the water rights compact and committed \$20 million to share the cost of the construction, renovation and upgrade of infrastructure related to Four Horns Reservoir. The 2009 Legislation provided a \$4 million appropriation to this infrastructure account. (HB 161 was approved by the by the House with a vote of 87-12 and the Senate by a vote of 48 – 2.)

The State's total commitment to the infrastructure account is \$20 million. (See attached-HB161, page 1)

HB 49 allows for the issuance and sale of \$16 million of general obligation bonds for repair and rehabilitation of the Four Horns Reservoir.

Bonds will not be issued and funds from the infrastructure account may not be disbursed until the Blackfeet Compact is ratified by the Congress of the United States and the Blackfeet Tribe.

The repair and rehabilitation of the Four Horns Reservoir is a critical aspect of the balance struck in the Compact between recognizing the Blackfeet Tribe's significant senior water rights while protecting non-Tribal water users on Birch Creek from being harmed by the Tribe's development of those water rights on Birch Creek.

The \$16 million commitment to the Blackfeet Compact completes the State's obligation to funding of the Blackfeet Compact.

2009 LEGISLATURE
BLACKFEET COMPACT BILL
\$20 MILLION COMMITMENT



AN ACT RATIFYING THE WATER RIGHTS COMPACT ENTERED INTO BY THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA; TRANSFERRING \$4 MILLION FROM THE GENERAL FUND TO THE BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT; APPROPRIATING FUNDS FOR WATER-RELATED INFRASTRUCTURE PROJECTS WITHIN THE EXTERIOR BOUNDARIES OF THE BLACKFEET INDIAN RESERVATION; AMENDING SECTION 85-20-1505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it is the policy of the state to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7, MCA; and

WHEREAS, pursuant to this policy, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate the settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the state of Montana; and

WHEREAS, the Montana Reserved Water Rights Compact Commission and the Blackfeet Tribe have reached agreement on a water rights compact; and

WHEREAS, a Blackfeet Tribe-Montana water rights compact is essential to provide legal certainty with regard to the water rights of Indian and non-Indian water rights holders; and

WHEREAS, implementation of the compact will require state and federal cost sharing; and
* WHEREAS, the State of Montana has expressed a commitment to share the costs of the construction, renovation, and upgrade of infrastructure relating to Four Horns Reservoir in the amount of \$20 million; and

WHEREAS, state law requires legislative ratification of any compact entered into pursuant to 85-2-702, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Water rights compact entered into by the Blackfeet Tribe of the Blackfeet Indian